

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff ,

vs.

EUGENE DARWIN PORTER,

Defendant.

No. 03-CR-0030-LRR

ORDER

The matters before the court are Defendant Eugene Darwin Porter's pro se motion for "Conditional Acceptance for Value for Proof of Claim Upon the United States District Court" ("Motion") (docket no. 108), filed May 22, 2006, and "Third-Party" James Tyrone Smith's "Certificate of Non-Response" ("Supplemental Motion") (docket no. 110), filed on behalf of Defendant on June 6, 2006.

Since March 2, 2006, Defendant has filed seven pro se pleadings (docket nos. 101, 102, 103, 104, 106, 108 and 110). Although the court construes pro se complaints more liberally than counseled pleadings, *see Wishnatsky v. Rovner*, 433 F.3d 608, 610-11 (8th Cir. 2006), the court considers Defendant's Motion and Supplemental Motion to be incoherent, nonsensical and frivolous. As the court previously instructed Defendant in its orders dated May 2, 2006, and May 8, 2006, Defendant must file a motion pursuant to 28 U.S.C. § 2255 if he desires to attack his criminal conviction.


Additionally, in Defendant's Supplemental Motion, he appears to argue that the government should have responded to his Motion. Such an argument is meritless. There is no requirement anywhere in the Federal Rules of Criminal Procedure, the Federal Rules

Governing Section 2255 Proceedings or the Local Rules which requires the government to respond to pro se post-conviction motion, unless the court orders the government to respond. *See, e.g.*, Rule 5(a) of the Fed. R. Governing Section 2255 Proceedings (“The respondent is not required to answer the motion unless a judge so orders.”).

Accordingly, Defendant’s Motion and Supplemental Motion are hereby **DENIED WITHOUT PREJUDICE**. Defendant is also hereby **ORDERED** to refrain from filing additional pro se petitions for relief. Defendant must utilize 28 U.S.C. § 2255.¹ Defendant is advised that the court may strike any subsequent petitions and pleadings which fail to comply with this order and the court’s previous orders.

IT IS SO ORDERED.

DATED this 7th day of July, 2006.


LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

Copies mailed on: mem 07.07.06

**to counsel of record or pro se parties as shown on
docket and other parties listed here:**

¹ The court notes that, on May 2, 2006, the Clerk of Court mailed a packet of information to Defendant which included the Section 2255 form which is typically used by prisoner’s who wish to attack their federal convictions and sentences.